



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 12, 1957

Honorable John C. White
Commissioner, Texas
Department of Agriculture
Capitol Station
Austin, Texas

Opinion No. WW-224.

Re: Are the funds presently on deposit in a bank in Harlingen, Texas, to the credit of the "Federal-State of Texas Inspection Service general operating fund" of such a nature as to properly be qualified as "public money", or are they in fact private funds and subject to reimbursement under the provisions of the cooperative agreement between the U.S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture; and related questions.

Dear Commissioner White:

You have requested an opinion concerning the reimbursement of funds presently on deposit in a bank in Harlingen, Texas, and the sale of certain office equipment and furniture in storage in a bonded warehouse in Harlingen, under the provisions of the cooperative agreement between the U. S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture. In your letter you have submitted the following questions:

"1. Are the funds presently on deposit with the First National Bank of Harlingen to the credit of 'Federal-State of Texas Inspection Service general operating fund' of such a nature as to properly be classified as 'public money' or are they of such a nature as to properly be classified as private funds and disposed of in accordance with the provisions of the Cooperative Agreement between the U. S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture?

"2. In the event that you are of the opinion that any portion of these funds are properly to be

classified as 'public money', then will you please designate such portion.

"3. Does the Texas Department of Agriculture have the authority to dispose of such office equipment and furniture as is presently in storage at Harlingen, Texas, in accordance with the provisions of the Cooperative Agreement between the U. S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture?

"4. Does the Texas Department of Agriculture have the authority to dispose of such additional equipment as is presently under its control in accordance with the provisions of the Cooperative Agreement between the U. S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture?"

We shall answer your questions in the order presented.

Your file indicates that there is presently on deposit in the First National Bank of Harlingen, Texas, funds in excess of \$100,000. This fund, it appears, has accrued as a result of the operation of the various inspection statutes of the State of Texas as they relate to the shipment of fruits, vegetables and citrus fruit, and as a result of the cooperative agreements entered into pursuant to these state inspection statutes.

The file further indicates that until 1953, the inspection service was carried out under the statutes in effect and under the provisions of a series of cooperative agreements entered into by the U. S. Department of Agriculture and the Texas Department of Agriculture. In 1953 the cooperative agreement that had been in effect between the U. S. Department of Agriculture and the Texas Department of Agriculture was terminated, and the Texas Department of Agriculture ceased to be a party to any cooperative agreement involving the inspection of fruits and vegetables.

The inspection statutes under which this cooperative agreement had been operative read, in part, as follows:

(1) Art. 117, V.C.S.:

"The Commissioner of Agriculture shall appoint Inspectors to inspect fruits other than citrus and vegetables other than potatoes at the different

shipping or loading stations in this State when called upon by the grower, shipper, shipper's agent, or by any financially interested party. When one or more of the above mentioned parties are operating at one or more shipping points and inspection is requested, the Commissioner of Agriculture shall appoint an Inspector to make the requested inspection and the party or parties requesting inspection shall contribute his or their pro rata of the expense of inspection.

". . .

"Sec. 4. All Certificates of Inspection issued by the Commissioner of Agriculture designating the true grade, classification, pack or other standard requirements of such fruits or vegetables under the provisions of this Act, or other form evidencing that official inspection has been made, shall be issued by the Inspector and delivered to the applicant upon the payment of his contribution of his pro rata share of the cost of inspection.
. . ."

(2) Art. 118a, V.C.S.:

"Sec. 1. In order to provide the means whereby producers of certain citrus fruit, and all interested parties, may secure prompt and efficient inspection and classification of grades of fruit at reasonable cost, and because it is hereby recognized that the standardization of the citrus fruit industry by the proper grading and classifications of citrus fruit by prompt and efficient inspection under competent authority is beneficial alike to grower, shipper, carrier, receiver, and consumer, in that it furnishes the grower and the shipper prima facie evidence of quality and condition of products, it guarantees the carrier and the receiver of quality of products carried and received by them and assures the ultimate consumer of the quality of the products purchased, this Act is passed.

". . .

"Sec. 12. It is provided that this law shall be self financing, and that the Legislature shall make no appropriation for the enforcement thereof;
. . . provided that the contribution shall be fixed

as nearly as possible with reference to the cost of maintaining the expenses of inspecting and grading citrus fruits under the provisions and requirements of this Act and the Co-operative Agreement, and the issuance of certificates with relation thereto; . . ."

(3) Art. 118c-1, V.C.S.:

"In order to provide a means by which producers and shippers of tomatoes may secure prompt and efficient inspection, classification, and grading of tomatoes at reasonable cost, and because the Legislature of the State of Texas recognizes that the standardization of tomato shipments through the proper grading and classification of tomatoes, by prompt and efficient inspection under competent authority, will confer benefits upon growers, shippers, carriers, receivers, and consumers, in that the certification by competent authority will furnish the grower and shipper of such products with prima facie evidence of the quality, quantity, and condition of pack of the product so certified, and because such certification will guarantee to the carrier and receiver the quality of products carried and received by them and will assure the ultimate consumer of the quality of products delivered to him, this Act is passed.

". . .

"Sec. 10. It is provided that this law shall be self-financing and that the Legislature shall make no appropriation for the enforcement thereof; . . . provided that the contribution shall be fixed as nearly as possible with reference to the cost of maintaining the expenses of inspection and grading tomatoes under the Cooperative Agreement; . . ."

As a result of the operation of the inspection services under the cooperative agreement, which was terminated, there had accrued a balance of \$17,917.60, which remained after the payment of all expenses and outstanding debts.

Part III (1) of the Memorandum of Agreement between the Production and Marketing Administration, U. S. Department of Agriculture and the Texas Department of Agriculture, which was terminated in 1953, reads as follows:

"(1) Upon the termination of this agreement any balances remaining in the hands of the Texas Department of Agriculture after all proper charges incurred in the conduct of the work provided for under this agreement have been paid, may be used for the conduct of activities in the State of Texas consistent with the purposes set forth in this agreement provided that such disposition shall be mutually agreed upon by the cooperating parties and provided further that in the event no agreement can be reached, the balances shall be equally divided between the cooperating parties hereto and that portion reverting to the Production and Marketing Administration shall be covered into the Treasury of the United States as Miscellaneous Receipts."

From the summer of 1953 until September 15, 1955, your file indicates that all inspection services were carried on by means of a cooperative agreement between the U. S. Department of Agriculture and Inspection Association, Inc., a corporation formed to assist the government agencies in their inspection service.

In 1955 the 54th Legislature amended the above inspection statutes to allow the establishment of cooperative agreements which could include any Texas firm, corporation, or association organized for the purpose of inspection, in addition to the U. S. Department of Agriculture as previously allowed. Pursuant to these amendments, a cooperative agreement between the Agricultural Marketing Service of the U. S. Department of Agriculture, Inspection Association, Inc., and the Texas Department of Agriculture was entered into on September 15, 1955. Part III (p) of this agreement reads as follows:

"(p) There are certain funds now on hand with the Inspection Association, Inc., as well as certain funds, office equipment, furniture, fixtures and other equipment being held by the Texas Department of Agriculture, which existed, accrued and accumulated under former cooperative agreements between the United States Department of Agriculture and the State Department of Agriculture, now being held by the State Department of Agriculture or to its credit in the First National Bank of Harlingen, Texas. These funds, office furniture, equipment and other properties so held by Inspection Association, Inc., and by the Texas Department of Agriculture, or placed to its credit shall, after the payment of all legal

obligations incurred to date by Inspection Association, Inc., immediately upon the effective date of this agreement, be made available to, and become property subject to use under this agreement, and shall also be subject to the hereinafter provided provision regarding distribution of assets under this agreement in the event of abrogation or termination hereof."

Under the provisions of Part III (p), the \$17,917.60 was transferred from the old account to the operating account which was created by the 1955 three-way agreement.

The Termination Clause of this three-way agreement provides:

"Upon termination of this agreement, or any extension or renewal thereof, any balances in the inspection fund, together with all furniture, supplies and equipment, may be used as mutually agreed for rendering of the service through a successor, cooperating agency or otherwise; provided, however, in case the agreement is not reactivated by mutual consent of the parties hereto, within one year of termination of this agreement, any unobligated balance remaining after all equipment has been sold and all proper charges incurred in the conduct of the work provided for under this agreement have been paid, shall be withdrawn from the inspection fund and returned to the applicants for inspection in proportion to the amount which they have paid for inspections under this agreement during a period of one year prior to the termination of this agreement. Any share which cannot be returned within two years from the termination of this contract shall be paid one-half to the Agricultural Marketing Service and the other one-half to the State Department of Agriculture."

By agreement between all parties, the three-way agreement entered into September 15, 1955, was terminated, effective April 12, 1956, and under the provisions of the Termination Clause, the \$100,000 balance remaining in the inspection fund becomes subject to the distribution provided for in the Termination Clause.

The language of Articles 117, 118a, and 118c-1, Vernon's Civil Statutes, as set forth above, indicates that the inspection services, as provided for by the provisions of these respective statutes, are to be financed by the contributions of those seeking the inspection service, and that the acts shall be self-financing. The language of the statutes also indicates that the contributions shall be fixed as nearly as possible with reference to the cost of maintaining the expense of inspecting and grading.

The amendments to Articles 117, 118a, and 118c-1, Vernon's Civil Statutes, which were enacted by the 54th Legislature, made several minor changes in these inspection statutes. The only significant change, however, was in the provision which established the power of the Texas Department of Agriculture to enter into cooperative agreements with any Texas firm, corporation or association organized for the purpose of assisting in the inspection provided for by the respective statutes. The amendments in no way modify the provisions of the prior statutes which established the method of financing and the extent of contributions.

We believe that the provisions of Articles 117, 118a and 118c-1, Vernon's Civil Statutes, have at all times indicated a clear intent on the part of the Legislature that the people of Texas should be provided with the means by which the fruit and vegetables which they produce, and desire to have shipped, may be promptly and efficiently inspected and classified. It also seems clear that the Legislature has indicated that the cost of this inspection shall in no way be borne by the State of Texas, but, to the contrary, should be financed by the individuals who receive the benefit of the inspection. The above quoted provisions indicate that each user of the service is to contribute his pro rata share of the expense and that his contribution shall be fixed as nearly as possible with reference to the cost of maintaining the inspection and grading service. As further indication of this intent the 54th Legislature, in amending Articles 118a and 118c-1, Vernon's Civil Statutes, has added the following phrase to Section 12 of Article 118a and to Section 10 of Article 118c-1.

" . . . but shall in no case exceed the actual cost of the service for inspection and grading services performed/rendered/ in a regular packing house. . . ."

For these reasons, it is our opinion that it was clearly the intent of the Legislature that the inspection service provided for by these statutes should be self-supporting

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and operated on a non-profit basis. It therefore follows, we believe, that regardless of whether the funds collected be classified as public or private, the Legislature intended that any surplus funds remaining after the performance of the inspection service should be returnable to the individual contributors.

It is our further opinion that though \$17,917.60 of the balance on hand accrued as a result of the operation of the inspection service under a former agreement, these funds are subject to distribution under the provisions of the 1955 agreement. These funds were used in accordance with the provisions of Part III (i) of the last U. S. Department of Agriculture-Texas Department of Agriculture agreement and were properly transferred to the inspection fund in the 1955 agreement in accordance with Part III (p) of the later agreement.

For these reasons, it follows that our answer to your first question is that all of the funds on deposit with the First National Bank in Harlingen, Texas, to the credit of "Federal-State of Texas Inspection Service general operating fund", are subject to disbursement in accordance with the provisions of the 1955 cooperative agreement entered into between the U.S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture.

As a result of our answer to your first question, it becomes unnecessary to answer your second question.

It is also our opinion that what has been said in connection with our holding as to the funds on deposit in the bank at Harlingen will apply with equal force in answering your third question, and that the Texas Department of Agriculture has the authority to dispose of all office equipment and furniture which is presently in storage at Harlingen, Texas, provided that this furniture was purchased out of the proceeds of the contributions paid by the users of the inspection service under the present three-way agreement or under prior agreements between the U. S. Department of Agriculture and the Texas Department of Agriculture. Subject to the latter condition, your third question is answered in the affirmative.

Likewise, it is our opinion that the Texas Department of Agriculture has the authority to dispose of any additional equipment which might have been purchased out of the proceeds of the contributions of the users under the 1955 three-way agreement, or prior agreements, and which is presently under its control. Subject to the latter condition, your fourth question must be answered in the affirmative.

SUMMARY

The funds presently on deposit with the First National Bank in Harlingen, Texas, to the credit of "Federal-State of Texas Inspection Service general operating fund" may be disposed of in accordance with the provisions of the three-way agreement entered into between the Agricultural Marketing Service of the U. S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture. All furniture presently in storage at Harlingen, Texas, and all other equipment which is presently under the control of the Texas Department of Agriculture, which was purchased under the provisions of the above three-way agreement or under the provisions of any previous agreement, is also subject to disposal under the provisions of the three-way agreement entered into as between the U.S. Department of Agriculture, Inspection Association, Inc. and the Texas Department of Agriculture.

Very truly yours,

APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman
W. V. Geppert
Wallace Finfrock
B. H. Timmins, Jr.

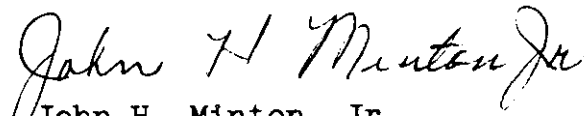
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